BLANK PAGE

CLERK'S COPY.

VOLUME II

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 442

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

EXPRESS PUBLISHING COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 17, 1940
CERTIORARI GRANTED NOVEMBER 12, 1940

BLANK PAGE

INDEX

Witnesses	Direct	Cross	Redirect	Recross
FRANK G. HUNTRESS	13	42		
THORNTON HALL	46	51	58	63

INDEX TO EXHIBITS

EXHIBITS	For Identification	In Evidence
B-1-A, B, & C	4	4
B-2	5	5
B-3	12	12
B-4	24	24
R-1	42	42

BLANK PAGE

1 BEFORE THE NATIONAL LABOR
RELATIONS BOARD
SIXTEENTH REGION

In the Matter of:
EXPRESS PUBLISHING COMPANY

and

SAN ANTONIO NEWSPAPER GUILD

Case No. XVI-C-293

San Antonio, Texas
October 6, 1938.

The above entitled matter came on for hearing, pursuant to notice, at 10:00 o'clock a. m.

BEFORE:

WILLIAM P. WEBB, Trial Examiner.

APPEARANCES:

L. N. D. WELLS, JR., Attorney on behalf of the National Labor Relations Board.

LEROY G. DENMAN, 215 W. Commerce Street, San Antonio, Texas, appearing for the Express Publishing Company, respondent.

FRANK G. RAGSDALE, No. 11 Circle Street, San Antonio, Texas, appearing for the San Antonio Newspaper Guild.

2 PROCEEDINGS

TRIAL EXAMINER WEBB: I wish to inform all parties that the Board's reporter makes the only official

transcript of these proceedings. Exceptions, briefs, or arguments, based upon the record must cite the official transcript and all references to the record must be to the official transcript. The Board will not certify any transcript other than its official transcript for use in any court litigation.

You may proceed, Mr. Wells.

MR. WELLS: Mr. Examiner, as Board's Exhibit No. 1-A, we offer in evidence an amended charge in Cause XVI-C-293, styled in the matter of Express Publishing Company and San Antonio Newspaper Guild, which amended charge was filed by the San Antonio Newspaper Guild by Frank G. Ragsdale, president, on the 18th day of August, 1938, with the Sixteenth Regional Office of the National Labor Relations Board.

TRIAL EXAMINER WEBB: Are you going to offer all your preliminary documents under one number?

MR. WELLS: We will be glad to.

TRIAL EXAMINER WEBB: You may put them all in under one number. A list of exhibits may be filed with the exhibits showing what is included. However, you may do it anyway you want to. I don't think it is necessary to do that.

MR. DENMAN: We have a motion to dismiss as to this charge. I don't suppose we have to present it now, but I don't want to be in the position of waiving it by not stating it now.

TRIAL EXAMINER WEBB: No. After the documents are offered, then we will hear the motions.

MR. WELLS: As Board's Exhibit No. 1-B, we offer in evidence a complaint and notice of hearing issued by Dr. Edwin A. Elliott, Regional Director of the Sixteenth Re-

gional Office of the National Labor Relations Board on September 20, 1938, to which complaint is attached a copy of the amended charge, which is in evidence as Board's Exhibit No. 1-A, and to which document is also attached a copy of the rules and regulations of the National Labor Relations Board.

At this time we would like to ask the respondent to acknowledge on the record service of complaint, notice of hearing and attached documents at least five days prior to this date in accordance with the proceedings outlined in the rules and regulations of the Board.

MR. DENMAN: We acknowledge that.

TRIAL EXAMINER WEBB: First, we will deal with the exhibits you are offering. Have you finished?

MR. WELLS: No. we haven't yet presented respondent's motion to dismiss and answer, but I thought we would take here of the complaint as it went along.

TRIAL EXAMINER WEBB: I wish to have you offer all your documents and then we will pass on them and then you can make whatever motion you wish to with respect to any of the documents.

4 MR. WELLS: Do we understand that Board's Exhibit 1-D, the complaint and the notice of hearing, is admitted?

TRIAL EXAMINER WEBB: I am waiting for you to get through.

MR. WELLS: All right. As Board's Exhibit No. 1-C, we offer an instrument styled "Answer" in Cause No. XVI-C-293, and filed by the respondent with the Sixteenths Regional Office of the National Labor Relations Board on October 1, 1938.

Those are all the formal documents, Mr. Examiner.

TRIAL EXAMINER WEBB: Are there any objections to these?

MR. DENMAN: In our motion to dismiss we have a motion to dismiss as to the charge in the complaint. Is it proper to present that now?

TRIAL EXAMINER WEBB: I will hear you after we pass on whether or not these documents will be admitted.

MR. DENMAN: Yes. Otherwise, we have no objections.

MR. RAGSDALE: Mr. Examiner, the Guild would like to make a motion to amend the complaint. Would that be in order at this time?

TRIAL EXAMINER WEBB: Not just now, please.

These documents are admitted.

(Thereupon the documents above referred to were marked as "Board's Exhibits Nos. 1-A, B, and C" for identification, and received in evidence.)

MR. WELLS: At this time, Mr. Examiner, we would like to ask the respondent to acknowledge on the record service of complaint, notice of hearing, amended
5 charge, and copy of the rules and regulations of the Board at least five days prior to this hearing in accordance with the regulations set forth by the Board.

MR. DENMAN: We do so.

MR. WELLS: And does the Union also acknowledge service, Mr. Ragsdale?

MR. RAGSDALE: Yes.

MR. WELLS: And the Union acknowledges service of respondent's answer on October 1, 1938?

MR. RAGSDALE: We do.

TRIAL EXAMINER WEBB: Could I have those documents now?

Have you the notice designating the Trial Examiner?

MR. WELLS: No, sir, Mr. Examiner.

TRIAL EXAMINER WEBB: You had better make some provision for that.

MR. WELLS: The order designating you as Examiner in this case has not yet arrived in San Antonio. I might suggest that we leave open exhibit No. 2, until it arrives and put it in then.

MR. DENMAN: That is satisfactory.

TRIAL EXAMINER WEBB: That may be done.

(Thereupon the document above referred to was marked as "Board's Exhibit No. 2" for identification, and received in evidence.)

6 TRIAL EXAMINER WEBB: Now, I will hear you gentlemen on any motions with reference to these documents.

MR. DENMAN: We filed a motion first as to the question of jurisdiction. I take it that can't very well be presented until after the evidence is in. That is on the question of whether or not the respondent is engaged in interstate commerce, but there is another part of the motion

that deals purely with the form of the matter set out in the complaint.

TRIAL EXAMINER WEBB: Are you going to file this written motion?

MR. DENMAN: It is already filed. It is one of the documents that your Honor has.

MR. WELLS: It is a part of the answer, Mr. Examiner.

TRIAL EXAMINER WEBB: What?

MR. WELLS: It is a part of respondent's answer.
(Discussion off the record.)

MR. DENMAN: My motion, as set out in the first part of this answer, is first in reference to jurisdiction; that the Board does not have jurisdiction because the matter does not involve interstate commerce and next that the Board does not have jurisdiction because the respondent's business, being a local business within the state, is not subject to the jurisdiction of the Board, and next, that the Board does not have jurisdiction because if any part of the respondent's business consists of interstate commerce its relationship to the matters involved is so indirect and inconsequential that the matters involved are not within the jurisdiction of the Board.

Now, I take it that I can only present those motions after the evidence is in on those subjects.

TRIAL EXAMINER WEBB: I will deal with that part of your motion now.

Ruling on that part of your motion is reserved.

Now, we will go on.

MR. DENMAN: The next part we object to is paragraph 8. The complaint in paragraph 8 is defective and fails to comply with section 4 (c) of Article II of the Board's rules in avering that Hall "made further statements" without identifying the statements. Paragraph 8 sets out certain statements made by Hall, which it alleges were violative of the Act, and then goes on and says, "made further statements well known to respondent tending to have the effect of discouraging membership." Now, the point is that we cannot prepare for trial or plead to an allegation of that sort because it does not state what the statements were, when they were made, what they consisted of, and we have no way of knowing what is going to be alleged against us.

The next one is of very much the same nature of allegation. In paragraph 6 the complaint is defective and fails to comply with Section 4 (c) of Article II of the rules and regulations of the Board in that it avers that the
8 San Antonio Newspaper Guild acting by and through its duly authorized representatives Frank Ragsdale and Henry B. Dielman and others requested respondent to deal collectively in failing to state the names refeerred to by the term "and others" so that the respondent is unable to prepare for trial thereon and answer and the complaint should be dismissed or the phrase "and others" stricken out or an amendment of the complaint be required to specify such names.

Another of similar nature is that the complaint in paragraph 9 is defective and fails to comply with Section 4 (c) of Article II of the Rules and Regulations of the Board in that it avers that by an alleged refusal to bargain collectively as set forth in detail in the allegations of paragraph 6 and by the allegations in paragraph 8, "and by various and sundry other means well known to respondent", that respondent interferred with, restrained, coerced and so forth, its employees, and the complaint is defective in that part in failing to specify or designate the "various and

sundry other means" referred to, and therefore failed to comply with the rules requiring a clear and concise statement of the facts constituting the alleged unfair labor practice or the names of individuals involved and the time and place of occurrence so that the respondent cannot prepare for trial and the respondent requests that that complaint be dismissed or that the words "and by various and sundry other means well known to respondent" should be stricken out, or that an amendment should be required to the said complaint requiring compliance with the said rule.

9

The amended charge which is attached to the complaint, after specifying certain alleged actions on the part of the respondent, states that by the acts set forth in the paragraph Q and by other acts and conduct it by its officers, agents and employees "interferred with, restrained and coerced its employees." It is defective in failing to specify or designate the other acts or conducts referred to and therefore fails to clearly and concisely state the facts constituting the alleged unfair labor practice, as required by the rules, or the names of the individuals involved and the time and place of occurrence, so that respondent is insufficiently advised of what complaint is made against respondent so that respondent cannot properly plead or prepare for trial thereon and respondent says that such complaint should be dismissed or that said words "and by other acts and conduct it by its officers, agents and employees" should be stricken or that an amendment should be required to the complaint requiring compliance as aforesaid to said rule.

The complaint in each of these paragraphs sets out specifically certain things that are being called on and our motion is not directed to those specific allegations. For instance, in paragraph 6, it says that respondent by refusing to negotiate on a certain date, in that it did or refused to do certain things, violated . . . Our motion is not directed to that part, but to the part

10

where it says "did other things well known to respondent by which it coerced employees".

For instance, in paragraph 8, it says that Hall made certain statements and quotes them and then it says "made further statements well known to respondent . . ." Our objection is to that part "made further statements . . ." in that it does not state what they are.

In paragraph 9, near the top of the page the complaint says, first specifically, "by refusal to bargain collectively with the San Antonio Newspaper Guild as set forth in paragraph 6 above and by the statement and other activities described in paragraph 8 above . . ." That part our motion is not directed to, but it goes on and says, "by various and sundry other means well known to respondent, respondent did interfere with, restrain and coerce . . ." And so forth.

Our proposition is that it does not comply with the rules. It does not comply with the necessitates for a fair trial in that the respondent is not advised of the charges to be made against it so that it could not properly prepare for trial.

TRIAL EXAMINER WEBB: I will hear you on that, Mr. Wells, if you wish to make any remarks to the Examiner.

MR. WELLS: Well, merely, Mr. Examiner, that the matter which is not set out particularly is a matter of knowledge peculiarly available to the respondent. It does not appear to us that there is any element of surprise involved. We will be glad to set out more fully who the other negotiators were. However, I am sure the respondent knows who that was. I call the Examiner's attention to the paragraph of respondent's answer appearing on page 7 of that document which shows that respondent knows what Hall said. As a matter of fact,

they make clear that they know what he said and that all that he said was not included in the complaint. I don't think they are in the position at all of not knowing what is charged.

TRIAL EXAMINER WEBB: With reference to this motion in connection with the amended charge, have you anything to say about that?

MR. WELLS: Mr. Examiner, if I might make a statement in that regard; I don't understand we are going to trial on the amended charge. As we understand it, a charge is presented to a regional office. Pursuant to that charge an investigation is made. Then, we go to trial on a complaint, which is the complaint of the Board through its regional directors, and the issues which the Examiner and the Board will determine will be only those issues raised by the complaint and the answer.

TRIAL EXAMINER WEBB: I don't think it would work a hardship on any party at interest to reserve ruling on these motions. Therefore, I will reserve my ruling on these motions.

MR. WELLS: Mr. Examiner, I have one small amendment to the complaint, which motion I would like to present at this time if I might. I call your attention to paragraph 4 of the complaint appearing on page 2 of that document, and move to amend the complaint by inserting following the word "copy desk men" in line 2 of paragraph 4, the word "rewrite men." Paragraph 4 of the complaint will then read, "All those employees of the respondent engaged in its editorial departments, namely, city editors, reporters, copy desk men, rewrite men, artists, photographers, copy boys, librarians, sports editors and writers and society editors and writers, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act, herein after referred to as the

12

Act, in order to insure respondent's employees the full benefit of their right to self-organization as to collective bargaining and otherwise to effectuate the policies of said Act,

(Discussion off the record.)

TRIAL EXAMINER WEBB: Any objections?

MR. DENHAM: No objection.

TRIAL EXAMINER WEBB: Your motion is granted.

MR. WELLS: Mr. Examiner, at this time we would like to move for an adjournment for perhaps an hour and a half or two hours. We have been in touch with the respondent in an effort to stipulate certain facts which we are sure will shorten the hearing and save time and record space, and we would appreciate a couple of hours to finish our negotiations as to the stipulation.

13 TRIAL EXAMINER WEBB: Did I understand you, Mr. Ragsdale, to say that you wished to offer a motion.

MR. RAGSDALE: The amendment which I wanted to offer is covered in Mr. Wells' amendment when he inserted the words "rewrite men".

TRIAL EXAMINER WEBB: You had reference to that too?

MR. RAGSDALE: Yes, sir.

TRIAL EXAMINER WEBB: Well, in view of your request to the effect that this recess might result in curtailing the hearing considerably, we will now adjourn until 1:00 o'clock.

(Thereupon, at 10:30 o'clock a. m., an adjournment was taken until 1:00 o'clock p. m.)

14 AFTER RECESS

(Whereupon, the hearing was resumed pursuant to recess at 1:30 o'clock p. m.)

TRIAL EXAMINER WEBB: We will resume the hearing.

Let the record show that we convened at 1:30 o'clock instead of 1:00 o'clock and then took a recess up until now pending further negotiations between counsel with reference to the stipulation.

MR. WELLS: Mr. Examiner, at this time we offer in evidence as Board's Exhibit No. 3, the stipulation entered into by the parties to this proceeding setting forth certain facts both as to jurisdiction and as to the merits of the case, to which stipulation are attached certain documents market Exhibit A through Z, and AA through EE, which exhibits are made a part of the stipulation.

(Discussion off the record.)

TRIAL EXAMINER WEBB: Are there any objections to these exhibits that have been offered?

MR. DENMAN: None. They have been agreed upon.
TRIAL EXAMINER WEBB: They are admitted.

(Thereupon the documents above referred to were marked as "Board's Exhibit No. 3" for identification and received in evidence.)

TRIAL EXAMINER WEBB: Now, we will go off the record.

(Discussion off the record.)

15 TRIAL EXAMINER WEBB: Proceed, Mr. Wells.

MR. WELLS: We would like to call Mr. Huntress, please.

FRANK G. HUNTRESS

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Wells) You are Frank G. Huntress, Sr.?

A Not Senior, Just Frank G. Huntress.

Q Are you the Mr. Huntress referred to in various of the exhibits before the Examiner as Mr. Huntress, Sr.?

A I am.

MR. WELLS: May we so stipulate, Mr. Denham?

MR. DENHAM: Yes. He was the president of the Express Publishing Company.

MR. WELLS: And president of the Express Publishing Company, the respondent.

THE WITNESS: Yes, sir.

Q (By Mr. Wells) Your papers, the Express and the News are members of the Associated Press?

A They are.

Q Can you just explain to the Examiner what type of arrangement you have with the Associated Press in regard to furnishing that organization with stories of news events happening in this locality?

A We contribute as a member any news of importance to the reporter of the Associated Press, which each member does.

Q Do you send your own reporters out particularly on stories for the AP or do you just forward copies of stories which they write to the AP office?

A We just take whatever our reporters bring in.

Q And give copies of it to the AP office which is in your building?

A Whenever they want it, yes.

Q On occasion, does the AP inform you that they want more information as to a particular story and ask you to get it for them?

A Well, they might ask the reporter that is assigned to him by the Associated Press.

TRIAL EXAMINER WEBB: I would like for the record to show that when you say "AP" you are referring to the Associated Press.

THE WITNESS: Well, that is understood, Mr. Examiner.

TRIAL EXAMINER WEBB: Let the record show that.

Q (By Mr. Wells) The Associated Press does not have any reporter in the City of San Antonio, does it?

A I don't believe they have. I think their reporters on each newspaper that is a member of the Association reports the news.

Q And then if the Associated Press wants further detail as to a story occurring in this area, the Associated Press will get in touch with you as a member paper and ask you to furnish more particular detail as to the story, is that correct?

A They do that and we furnish it.

TRIAL EXAMINER WEBB: Where would that request come from? What office of the Associated Press?

A It would come probably from the Texas Bureau at Dallas. They are the ones that distribute all the news over the state.

TRIAL EXAMINER WEBB: They collect it in Dallas?

A Yes, sir.

TRIAL EXAMINER WEBB: And it goes to their New York office or other offices?

A Well, it might go to Kansas City or Chicago.

TRIAL EXAMINER WEBB: For distribution?

A Yes, sir.

Q (By Mr. Wells) But a request for more detail might come through Dallas or New York?

A Usually it comes from Dallas. I don't know if it ever comes from any other place.

Q What arrangement does your paper make to pay the Associated Press for news items which it delivers to you?

A Well, the Associated Press—each newspaper is a member and that is a mutual concern, the Associated Press, a nonprofitable association, assesses the members according to the service that they give in that locality.

Q And the Express Publishing Company is a member of the AP?

A Is a member of the Associated Press and so is the Evening News a member of the Associated Press.

Q And the particular amount that you pay to the Associated Press for news delivered to you might vary from week to week or month to month?

A No, it doesn't. They assess so much a week, unless they have extra wires, and if they do they notify you in advance.

Q The Associataed Press furnishes you with news and stories from all over the world?

A Through their Dallas office, yes, sir. Now, the way the Associated Press does, they dispatch their reports over the wire to their employee in charge here at our office through the wires of Dallas, you know. Sometimes it may come from Kansas City—I don't know—but usually they do come from Texas.

TRIAL EXAMINER WEBB: Well, just to take a concrete example, could you give us a brief idea of how you are getting your war news, for instance, from Germany and Czechoslovakia?

A Well, that I couldn't tell. It comes over the printer in our office and taken in charge by one of the employees

of the Associated Press and then handed to our news department.

MR. DENMAN: The stipulation describes that process in detail.

19 TRIAL EXAMINER WEBB: Sir?

MR. DENMAN: The stipulation describes that process in detail.

TRIAL EXAMINER WEBB: Oh, it does. I haven't read the stipulation carefully.

MR. DENMAN: Yes, it does.

Q (By Mr. Wells) Now, how are you compensated by the Associated Press for the news items which you furnish to it?

A We are not compensated at all.

Q That is just a duty which you owe to them pursuant to your membership in the Associated Press?

A That is right.

Q Does the same arrangement of paying as to the United Press? Are you a member of that organization?

A No, we are not a member of the United Press.

Q How do you obtain your news from the United Press?

A Well, they come over the wire to my printer—you know what a printer is? A Morris printer—and then delivered to the news department.

Q Where is the United Press office here in San Antonio?

A I think at Dallas. They had a San Antonio office but they disbanded it a few weeks ago.

Q Then you have a direct wire from the Dallas UP office to your publication office here?

A Yes, sir. I am not sure of that but I think that is the way comes over.

Q And the UP also reports to you.

MR. DENMAN: May I interrupt for one minute. We have a stipulation covering that point in there. Mr. Huntress' answer is somewhat ambiguous and Mr. Huntress' answer also somewhat conflicts with the stipulation. Now we have agreed that the stipulation recites the facts and I don't want Mr. Huntress' answer to affect the stipulation in any way.

MR. WELLS: I will be glad to strike Mr. Huntress' answer.

Q (By Mr. Wells) The UP also furnishes you news of happenings all over the world?

A They do over the lease wire to us.

Q Do you furnish any news items to the United Press?

A We do not.

Q What arrangement do you have for compensating the United Press for news which it gives to you?

A We pay them so much assessment each week; whatever they stipulate.

Q Is that paid for on a space rate basis?

A No, that is paid on a contract basis.

Q Do you have at hand the approximate amount that you paid to the United Press each week for their news service?

A No. Probably Mr. Hall could give you that. I don't keep those details.

Q That payment is made to the New York office of the United Press?

A I believe it is.

Q Do you know what your assessment to the Associated Press is?

A No, I do not.

Q Mr. Hall would have that information?

A Yes, you can get that information from him.

Q Your company has a contract with the Typographical Union, is that Correct, Mr. Huntress?

A Yes.

Q Do you have with you a copy of that contract?

A I think my attorney has that.

MR. DENMAN: We tender it.

MR. WELLS: May we have just a minute please, Mr. Examiner?

TRIAL EXAMINER WEBB: Yes.

(A short recess was taken.)

TRIAL EXAMINER WEBB: As I understand it, we are dealing now with the Express Publishing Company and we are dealing with both the newspapers that this respondent publishes as one unit?

MR. WELLS: That is correct. As a matter of fact, we have agreed in the stipulation, Mr. Examiner, that the unit consists of the editorial employees not only of the Express but of the News, the two together.

22 TRIAL EXAMINER WEBB: In other words, we are dealing with both these newspapers as one unit?

MR. WELLS: That is correct.

TRIAL EXAMINER WEBB: And they are both owned and operated by the respondent, The Express Publishing Company?

MR. DENMAN: That is right.

TRIAL EXAMINER WEBB: And the ownership, I take it, is a hundred per cent in both cases?

MR. DENMAN: That is right.

Q (By Mr. Wells) Mr. Huntress, is the document which I hand you the original of the contract which you now have in effect with the San Antonio Typographical Union No. 172?

A Yes, sir?

MR. WELLS: Mr. Examiner, we offer in evidence that portion of the contract which the witness has identified appearing on page 4, as the pages are numbered, the portion headed "Section 2," and we offer only that portion of the contract.

TRIAL EXAMINER WEBB: Is there much of it?

MR. WELLS: No, sir, it is just a short portion.

TRIAL EXAMINER WEBB: You may read it into the record, if you so desire.

MR. DENMAN: We object to the introduction of it. We have no objections on the basis of it having been properly proved up. We admit execution of the con-
23 tract, but we object to its admission on the ground that it is irrelevant to this proceeding. It is a contract between the Express Publishing Company and another union; dealing with another department wholly separate from this one, and we feel that the only issue upon which counsel could be expected to offer it is to use it as an argument to the effect that provisions that the respondent would agree to in that contract would be reasonable for it to make with this department, and we think that is leading the case astray into collateral issues because then we would have to determine what the incentives to go into that contract with another department were, and what was given by the union in return for the stipulations that were made in that conract, and we would open a vast field of inquiry as to the reason for this or that negotiation and as to whether it was reasonable in that case and we feel that that would be an injustice to the parties and would lead to an unnecessary incumbering of the record as to the nature of that contract; and if our foregoing objection is overruled, then we further object that not just part of the contract be offered, because it would be unintelligible by itself, but the entire contract should go in, because from that lone could it be determined as to whether or not it was more reasonable or less reasonable or more onerous or less onerous than the one offered by the Guild in this particular instance.

MR. WELLS: Might I make a statement, Mr.
24 Examiner, to the effect that we believe the particular paragraph referred to is relevant. It is

what is known generally as a closed shop provision. Now, in the negotiations which are already in evidence as a part of the stipulation, the respondent stated that it was unwilling to enter into a closed shop contract with the Guild and stated as a reason for its unwillingness the fact that a closed shop contract was illegal and was in violation of the National Labor Relations Act. Now, as going to respondent's good faith in asserting that reason for its unwillingness, it appears to us that it is relevant to show that the same respondent has a contract with another group of its employees containing a closed shop provision.

MR. DENMAN: The record will show or the stipulation will show that the respondent did not state that a closed shop would be in violation of the Wagner Act. It said that it was its belief that a stipulation in the proposed contract which the Guild proposed would be a violation of the Wagner Act in that the stipulation required the respondent to require every employee it had to join the Guild by a certain date and that it conceived that to be a violation of the Act and there is no such similar stipulation in this contract.

Furthermore, we think it would not be relevant, if the respondent contended that a certain thing would be a violation of the law and for that reason it could not enter into it, to show that the respondent had violated the law on another occasion. We think if a man is asked to rob a bank and he says: "No, I don't want to do it. That would be a violation of the law," and then say: "I will inquire into the reasonableness of your position to show that you robbed a bank on another occasion", would not be a proper inquiry, because two wrongs do not make a right and the statement made by the respondent as to whether the contract was violative of the Wagner Act or not can be decided by the contract itself and cannot be decided on the basis of whether or not on some occasion the respondent made a contract with somebody else containing certain provisions.

TRIAL EXAMINER WEBB: I think both you gentlemen are right. In this respect I will say that I am perfectly willing to admit testimony with respect to incidents bearing on the labor relations in the respondent's plant even though they may not be closedly related to the issues in the case. In other words, sometimes we let in testimony in regard to labor relations in a plant that occurred prior to the passage of the Wagner Act to simply give us a background or to throw some light on the situation. Actually the respondent could not be held liable for some alleged act or some act committed prior to the passage of the Act, but we have admitted testimony in regard to those things, as I say, to give us some idea of the background on the labor relations in the plant.

Now, with reference to this agreement which
26 respondent has with the San Antonio Typographical Union No. 172, which is an entirely different unit from the one which we are considering in this hearing, I am quite willing to admit testimony to the effect that there is such a unit in the plant and that there is such a union in the plant also and that the respondent is under contract with the union which is the representative of these particular employees, which is a different unit from the one that we are considering entirely, and also to the effect that the contract calls for a closed shop, but so far as the details of the contract and all the provisions of the contract are concerned, I don't think it is relevant at all to this case for the simple reason, as you have already stated, we do not know the circumstances surrounding the execution of this contract and we won't undertake to go into them because it is not necessary and it is not raised. The complaint in this case raises no such issue. I mean that this is an entirely different group of employees, an entirely different union. Is that true?

MR. DENMAN: That is so.

TRIAL EXAMINER WEBB: As I say, the general ef-

fect that the respondent is under a contract with another union covering other employees in the plant is relevant. That is all right. That is relevant. But I don't think it is relevant to go into details of the contract. However, counsel has offered a certain portion of this contract in
27 evidence. I am prepared to admit that paragraph of the contract known as Section 2, for the purpose of showing that, as I have stated, the respondent is under contract with another union in regard to another unit of employees in the plant and for that purpose only.

MR. DENMAN: Note our exception.

TRIAL EXAMINER WEBB: The objection is overruled and you may read this section into the record.

MR. WELLS: "Witnesseth: That from and after the first day of December, 1928, and until the thirty-first day of July, 1933, and continuing thereafter until a new agreement shall have been made, party of the first part binds itself to the employment of its composing room of members of the International Typographical Union. This shall include foremen, floormen, makeup men, proof readers, machinists, operators of type and line setting and casting machines (not including pot feeders, wipers of said machines, or boys employed to proof galleys).

(Thereupon the excerpt referred to was marked as "Board's Exhibit No. 4", for identification and received in evidence.)

TRIAL EXAMINER WEBB: I think you could have gotten that same information by simply asking the witness the question, "Is there another union in there and what class of employees are covered and have you got a contract with them?"

MR. WELLS: Mr. Examiner, I wanted to go to
28 the best evidence.

TRIAL EXAMINER WEBB: All right. Proceed.

Q (By Mr. Wells) Mr. Huntress, the contract with the Typographical Union was first signed of November, 1928, is that correct?

A That is right.

Q And from time to time it has been renewed or changes have been made?

A That was renewed and you have it there, the date it was renewed. It was not renewed from time to time. If you will hand it to me I will show you.

Q Well, if you will, just state to the Examiner when it was renewed after it was first executed.

A That was renewed on July 7, 1937, on all the stipulations, wages and other things.

Q The closed shop agreement was renewed on July 7, 1937?

A The entire contract was renewed, yes, sir.

TRIAL EXAMINER WEBB: And it is in effect now?

Q (By Mr. Wells) Mr. Huntress, in this next question, I have reference to your present attitude; that is, as of this time: Do you have any character or counter proposal to offer to the Newspaper Guild in regard to any question of wages or hours or working conditions?

MR. DENMAN: Are you through with the question?

A It is in effect now, yes, sir.

29 MR. WELLS: Yes, sir.

MR. DENMAN: We object. This is not the method in which the Act requires a party to carry on negotiations and a party could not be expected to sit on the witness stand and dictate proposals that he would agree to. The party would be entitled to draw those up with the aid of counsel and with his advisers and it would not be fair to expect the party to dictate orally contracts or to be required to state offers of contracts from the witness stand. It would be beyond the capacity of anybody to expect him to explain the terms of a lengthy agreement from the witness stand; beyond the capacity and ability of a lawyer, much less that of a layman.

MR. WELLS: Mr. Examiner, our charge is this: The charge of failure to bargain collectively is a continuing charge and failure to bargain as of May, June and July is failure of, up to and including October 6, 1938. Now, the respondent's position on several points is more or less clearly indicated in the correspondence and the minutes of meetings all of which are included in the stipulation. I believe that you, Mr. Examiner, and the Board should be apprised of the respondent's position as of this date and for that reason we are asking the question.

MR. DENMAN: If the question had been "Are you willing to continue negotiations" I wouldn't have any objections to it, but to ask him what counter proposition he would make and expect him to sit on the witness stand and try to state a counter proposition to a contract covering many pages, I don't think would be reasonable, relevant or proper.

TRIAL EXAMINER WEBB: Will you read that question, please?

(The last question was read.)

TRIAL EXAMINER WEBB: Well, if he answers that in the affirmative are you going to ask him, "What are they?"

MR. WELLS: Yes, sir.

TRIAL EXAMINER WEBB: I am inclined to sustain the objection to that part of the question. I see no objection to asking the witness, as stated by respondent's attorney, if he is now in a position to or would he be willing to bargain with the union or negotiate with the union with respect to wages and hours and other conditions of employment.

MR. WELLS: Mr. Examiner, my difficulty with that question is just this; that we are asking the witness to state a conclusion. He may very well state, "Yes, I am willing to negotiate", and his idea of what negotiating is might not be the same idea that you or I might have or that the Board might have. I do not think the Board ought to be apprised of what his position is and of what he is willing to do. They may say that what he is willing to do constitutes bargaining. I just want the Board to have the facts.

TRIAL EXAMINER WEBB: I don't see what assistance that would give us in determining the issues in this case if the witness were to answer it that he
31 would be prepared to offer thus and so and go into detail as to what he is prepared to do. In that case we would be bargaining here in this hearing; using this hearing as a means of collective bargaining or negotiating. We are not here for that purpose. We are here to determine the issues raised by this complaint.

MR. WELLS: Mr. Examiner, we are here though, aren't we—pardon me for asking the question—as I understand it, to determine what the parties' acts have been and what their attitude now is in reference to a continuing charge of failure to bargain? It is not just a charge of failure to bargain back in April. It is a charge continuing up to this very minute.

TRIAL EXAMINER WEBB: Are we concerned with what the respondent is going to do from now on or are we

concerned with what the respondent is alleged to have already done?

MR. WELLS: I think we are concerned with what the respondent has done up to this very minute and I think if the respondent is ready to bargain tomorrow, even though you have heard the case, the question is moot.

TRIAL EXAMINER WEBB: Well, we will see how far we will go in this. Objection overruled, and Mr. Huntress, answer the question.

MR. DENMAN: Note our exception.

TRIAL EXAMINER WEBB: Read the question, please, Mr. Reporter, but understand, we will not go too much into detail with respect to what the respondent now may do or what he may
32 offer, unless you can show me that you connect it up with the issues of this case.

Read the question, please.

(The last question read.)

A Don't you think that is a matter of trying to bargain here that should be taken up by the negotiators themselves?

TRIAL EXAMINER WEBB: Now, Mr. Huntress, do you understand the question? If you do understand it, answer it. If you don't understand it, we will have him clarify it.

A All right. I would like to have it clarified.

TRIAL EXAMINER WEBB: Will you reframe your question or explain it to the witness, Mr. Wells?

Q (By Mr. Wells) Are you now willing to offer, Mr. Huntress, any particular provision of an agreement which

you are now willing to enter into with the Newspaper Guild?

A That is about the same question you asked before.

TRIAL EXAMINER WEBB: You understand the question?

A Well, I understand the question that you want to negotiate with me now. I am not negotiating at this time. I thought we were here on a trial and that we were charged with certain things and that those particulars would be brought out here.

MR. WELLS: Mr. Examiner, as I understand your ruling, it was that if the witness understood the question he would do his best to answer. We would like to requeust that now.

TRIAL EXAMINER WEBB: Well, he is answering it, as I understand it. As I understand it, he has
33 answered the question. If he has not answered it sufficiently, you may continue to continue to question him. He is your witness.

Q (By Mr. Wells) Mr. Huntress, other than the statement you have just made, do you have any proposition of any kind which you will now state that you would be willing to agree to with the Newspaper Guild; that is, a proposition in regard to wages, hours or working conditions?

A I still feel that that question is out of order. That is not what you brought us up here for.

Q Now, Mr. Huntress, in direct answer to the question, if you please, do you have any proposition on any point in regard to wages or hours or working conditions with which you would now be willing to agree?

A Well, the Guild has never asked me that. Therefore, I couldn't answer it.

MR. WELLS: Please, Mr. Examiner, I will ask the witness to be responsive to the question.

TRIAL EXAMINER WEBB: Well, now, I would like to make this observation: As I understand, if you are asking this witness now whether he is prepared to open up this question of negotiation and make a certain proposal looking toward a settlement of the issues of this case, is that true?

MR. WELLS: No, sir.

TRIAL EXAMINER WEBB: If that be true, I would be willing to adjourn for a sufficient length of time for the Union and the respondent to go into the matter, if you think that you are going to come to a settlement of the case.

34

MR. WELLS: We would be happy, and I am sure the other parties would be, if the matter could be adjusted. However, I dont' have in mind the adjustment of the matter in the question I just asked. I had in mind ascertaining what the respondent's present position is in regard to bargaining with the Union. As I understand, the failure to bargain is a continuing charge.

TRIAL EXAMINER WEBB: Why not ask the witness the question: Is the respondent willing now to renew or continue or to take up negotiations with the Union?

MR. WELLS: Mr. Examiner, the documents which are now before you indicate that the respondent has so stated to the Regional Director for the Labor Board and, I believe to the Union too. I am not sure of that. What about that, Mr. Denman?

MR. DENMAN: That is correct.

MR. WELLS: However, the meat of the issue before the Examiner is whether or not all this talk and all this writing that has gone on does constitute bargaining.

Now the Board's contention in the issuance of the complaint is that what the respondent has done does not constitute bargaining and that his mere statement that "I will continue doing what I have been doing", won't settle the issue. For that reason we would like to know what his attitude is specifically as to particular points in the matter of a counter proposal.

MR. DENMAN: We feel that this is not an attempt to try the respondent on the charges made but on something new; as to whether today they are willing to negotiate. We concede that the law is that the obligation to continue to negotiate is a continuing one, but if the Board feels that today they are not willing to negotiate, there should be a charge brught that they are not willing to negotiate today and then try that issue.

As counsel said, the respondent, as shown by the record, has in writing informed both Dr. Elliott and the Guild that he is willing to continue negotiating, however, counsel is not asking that. He says, "What proposition are you willing to make?" The effect of that is this: Here is a long contract and to put a witness on the stand and ask him, "What proposition are you willing to make," when we all know that a proposition such as that must be handled with care, with attorneys and advisers on hand, is not fair. I repeat it is not fair to put a witness on the stand and ask him what kind of contract or proposal he is willing to make.

TRIAL EXAMINER WEBB: I am not prepared to change this hearing into a conference for the purpose of negotiating a settlement of this case or an agreement between the Union and Respondent. Now, if that is contemplated, as I say, I think it would be appropriate to adjourn the hearing for the purpose of having a conference between the Board and the respondent looking toward a settlement and

then, if a settlement is reached, it can be dealt with in this hearing, but if that is not the purpose, then I am not disposed to compel this witness to sit here on the witness stand and state what he would be prepared to do from now on in regard to entering into a contract with the union in respect to wages, hours and conditions of employment. I don't see how that would assist us in determining the issues of this case. I can't see that.

MR. WELLS: Just so I may understand you, Mr. Examiner; I had understood that the question was first permitted and that you had instructed the witness to answer the question. Now, as a further basis for the question we refer to paragraph 6 of the complaint, which is in evidence, half-way down the paragraph, "On said dates and at all times thereafter respondent did refuse, has refused, and does now refuse to bargain collectively with said San Antonio Newspaper Guild as the exclusive representative . . .. . " and so forth.

There is a charge of failure to bargain as of right now. Now the respondent comes before the Examiner and contends that it has expressed a willingness to the Regional Director of the Sixteenth Region of the Board that, "We will continue negotiations with the Board." It tells the Union, "We will be glad to meet with you at any time." But it appears to me that what the Examiner and the Board will be interested in
37 is not a statement of a general conclusion as to what they will do, but with a minute observation as to what has gone on and what the attitude of the respondent is right now so that the Board may determine and tell the parties whether or not what has gone on has been bargaining.

TRIAL EXAMINER WEBB: As I stated, I am prepared to let the witness answer the question as to whether or not the respondent was inclined to bargain with the Union. Even then I don't consider that as relevant. I don't

see how the answer to that question would help us solve the issues in this case. As I understand it from the complaint here, the respondent is charged with an alleged violation of Section 8 (1) and 8 (5) of the Act. Now, whatever respondent may do in the future is another proposition entirely. It is what respondent already has done and, as I stated, if the witness answers that he is prepared to negotiate with the Union, then you will ask him what is his proposition. Then you turn this hearing into a negotiating conference and I sustain the objection to that.

We will proceed.

MR. WELLS: May we have that information in the record for the purpose of a bill, Mr. Examiner? I don't like to be contentious about the matter, but I do think the Board will be quite interested in it. I will try to be just as brief as I possibly can.

TRIAL EXAMINER WEBB: As I say, I will
38 overrule the objection to the question to the witness as to whether he is prepared to negotiate or wants to or will ngotiate with the Union.

MR. LENMAN: We have no objection that question.

TRIAL EXAMINER WEBB: But I am not prepared to go into detail as to what offer the respondent is now willing to make to the Union in regard to wages and hours and working conditions. As I see it, that properly belongs to a bargaining conference and not to this hearing. It would burden this hearing.

If, as I say, the respondent and the complainants want to get together and settle this case, if they come to an agreement, we are perfectly willing to settle the case on an agreed state of facts. At any stage of the proceeding it can be settled, but if this is merely asking the witness to give a statement of what he is willing to offer the Union

just to find out what the respondent is now willing to do, I sustain the objection to that.

MR. WELLS: Mr. Examiner, I haven't probably made myself clear.

TRIAL EXAMINER WEBB: I don't understand you.

MR. WELLS: And I will be glad to state my position for the record again, or off the record if you desire.

TRIAL EXAMINER WEBB: Let it go on the record.

MR. WELLS: It is just that respondent stands charged as of this minute with the charge of failure to
39 bargain with the Union. What respondent's attitude is as to bargaining and not as to the conclusion of bargaining but as to the actual steps which respondent will take in bargaining, is therefore material to the charge before the Examiner. For the sole purpose of showing what respondent's attitude is now we ask the question, and not attempting in any way to turn this session into a bargaining conference. It is merely so the Board may have the facts as to what the respondent's attitude is.

TRIAL EXAMINER WEBB: I think that could be gotten in one question. If you want to know the respondent's attitude with respect to bargaining, ask the question, Are you prepared to enter into negotiations with respect to collective bargaining?

MR. WELLS: Mr. Examiner, I have no doubt as to what respondent's answer will be. It will be the same answer that appears in Exhibit EE, which is before the examiner, "We will be glad to meet with the Guild and negotiate with the Guild," but as I see it, the issue before the Examiner is whether or not all these letters and all these conferences constitute bargaining.

TRIAL EXAMINER WEBB: Exactly.

MR. WELLS: Now, the Board in its complaint contends that all these actions do not constitute bargaining.

TRIAL EXAMINER WEBB: Yes. Well, now, how are you going solve that problem? By asking the witness that question of what he is willing to do in the future? If he says, "Yes," he is willing to bargain, then you will say, "What are you willing to do?" Then, you will make his say what he is willing to do. Now, are you going to put the Guild on the stand and ask them, "Are you willing to accept this? You have heard what the witness said. Are you willing to accept it? If not, then, what will you accept?"

Then you would turn this hearing into a bargaining conference, which is not the purpose of this hearing at all. If you are doing that as a means of arriving at a settlement of the case, as I say, I am perfectly willing to adjourn and let you hold a conference and ask the respondent, "What are you willing to do?" And, then, let him outline in detail what he is willing to do. Then, if the Union is willng to accept it, then, you would have the basis of settlement, but I don't think it is admissible to go into that with the witness from the witness sand.

MR. WELLS: We certainly have no idea of turning the hearing into a bargaining conference. I don't think it is material to ask the Union what they will do, because they are not charged with failure to bargain.

I am in a sense arguing the case before the Examiner and I don't mean to take advantage of you by doing so, Mr. Denman.

MR. DENMAN: Yes.

41 MR. WELLS: That the Guild came to the respondent with what they called the model contract, following which there was a series of correspondence and four meetings at which quite a bit of talk occurred, and the Guild filed charges that the respondent was failing to bargaining, although it was meeting with the Guild.

TRIAL EXAMINER WEBB: You mean that it failed to bargain in good faith?

MR. WELLS: Yes.

TRIAL EXAMINER WEBB: They evidently bargained. That appears from the fact that they had these conferences. Now, you are predicating this case on the theory that they did not bargain in good faith and to that extent they have violated this provision of the Act.

MR. WELLS: Yes, sir. The quesion then, before the Examiner is whether or not what has happened and what is now happening, since this is a continuing charge, constitutes a violation of Section 8 (5) of the Act. On numerous occasions the Union requested the respondent to present some character of counter proposal. I have read through the correspondence and the transcripts of the meetings and have been unable to find such counter proposal. Now, I would like the Board to know whether or not at this time this respondent, who is charged with a continuing refusal to bargain, will offer a counter proposal?

42 TRIAL EXAMINER WEBB: Let me add at this point that the statements made by counsel are not evidence in this hearing.

MR. WELLS: We certainly meant them not to be.

TRIAL EXAMINER WEBB: Certainly not.

MR. DENMAN: I think counsel is under a misapprehension as to what occurred. It is all set out in the stipulation. The Union presented a contract. Mr. Huntress at the meeting read a lengthy statement giving his reasons, going down the contract from item to item why he did not think it was acceptable. The union representatives said, upon being addressed as to whether they thought the contract submitted was reasonable, that they didn't think it was warranted or justfied at the present time; that is, the contract that was submitted; and Mr. Huntress then stated: "Well, if you think so, have you any other contract to submit? You are at liberty to submit one if you want to and I will give it careful consideration."

They said, "Do we have to submit one?"

He said, "No, you don't have to submit one but if you do I will give it careful consideration."

At one of the first conferences one of the members asked Mr. Huntress if he had a counter proposal to offer and Mr. Huntress then said that in respect to the statements by the representatives that they didn't think the terms of the proposed contract reasonable he
43 didn't think he had to submit one and they withdrew to talk the matter over.

TRIAL EXAMINER WEBB: I think that is all part of the stipulation.

MR. DENMAN: Now to put Mr. Huntress on the stand and ask him now, "What are you willing to submit?" is a task beyond the comprehension of any man.

TRIAL EXAMINER WEBB: I sustain the objection. Proceed.

MR. WELLS: May we have it for the purposes of our bill of exception just so it may be before the Board?

TRIAL EXAMINER WEBB: Certainly. I will state here now that where an objection is ruled on by the Trial Examiner an exception is noted automatically, whether you note it in the record or not. In other words, your exception is in the record whether you note it or not.

We will proceed with the examination of this witness.

MR. WELLS: We understand we may ask the same question for the purposes of the bill.

TRIAL EXAMINER WEBB: The question has been asked, objection made and sustained by the Trial Examiner; that is, to that part of the question which he is asked to go into detail as to what he is prepared to offer on behalf of the respondent to the Union at the present time.

MR. WELLS: What I mean is, Mr. Examiner, we except to your ruling on the question and then move that the same question be submitted to the witness for the purpose of a bill.

44 TRIAL EXAMINER WEBB: All right.

MR. WELLS: In other words so that his answer may appear in the record so that if the Board agrees with us the Board may have the answer before it.

TRIAL EXAMINER WEBB: That may be done, certainly. Go ahead.

MR. WELLS: Will you read the question?

(The question was read as follows:

"Question: Mr. Huntress, other than the statement you have just made, do you have any proposition of any kind which you will now state that you would be willing to agree to with the Newspaper Guild; that is, a proposal in regard to wages, hours, or working conditions?")

A Haven't I answered that?

Q (By Mr. Wells) I want you to answer that question, please, sir.

A. I am going to make the statement that we never refused to bargain collectively with the Guild. The Guild submitted a contract to us, a proposed contract to us—

Q. I am afraid you don't understand the question. The question was whether or not at the present time you have any kind of counter proposal in regard to hours, wages, or working conditions which you are now willing to offer to the Guild?

A. That is the matter that I referred to and I never refused to submit a counter proposition and furthermore, I think—

45 Q I am just asking you with reference to the present time.

TRIAL EXAMINER WEBB: Let him finish his answer. Finish your answer, Mr. Huntress.

A That is all.

Q (By Mr. Wells) I am just asking you whether or not at the present time you have any counter proposition?

A How do I know, if we were to submit a counter proposition, that it would be accepted?

Q Well, I will ask you just to answer the question, please. At the present time do you have any counter proposition?

A I believe I have answered it.

Q Other than the answer you have given us, you have no counter proposition to offer to the Guild?

A You are compelling me here to say something that really I was not brought up here for. I was brought here with the charge that I refused to bargain faithfully with the Guild. I deny that because we did bargain faithfully and it was them that refused to go further in the negotiations.

Q Pardon me, just a minute, Mr. Huntress.

I will move to strike the witness' statement as not responsive and ask that the question put to him be reasked and he be required to answer it.

TRIAL EXAMINER WEBB: Motion denied. Proceed

MR. WELLS: Will you read the question, please, Mr. Reporter.

46 (The last question and answer read.)

MR. WELLS: Now, I believe that can be answered "yes" or "no".

A No, not at the present time.

Q (By Mr. Wells) Have you ever had any counter proposition which you have offered to the Guild?

MR. DENMAN: We object to that as infringing on our stipulation. The stipulation contains a full statement of what occurred with reference to all those circumstances and we contend that some of those were counter proposals and they contend that they were not.

MR. WELLS: I will limit the question.

MR. DENMAN: That is for the Examiner to determine, whether or not that is bargaining, and not for the witness.

MR. WELLS: I would like to insist upon the question, because the respondent's present intent is certainly material on the issue of good faith and whether or not he intended something which is already before the Examiner to be a counter proposal, I think should be made known to the Examiner and the Board.

TRIAL EXAMINER WEBB: Well, as I understand it, the parties at interest have entered into a stipulation with respect to what transpired at these negotiations and these meetings. You have stenographic reports here, you have letters, you have voluminous documents covering what is purported to have transpired
47 at these conferences. Is that true?

MR. DENMAN: That is correct.

TRIAL EXAMINER WEBB: And as I understand it you were going to submit those in view of oral testimony as to what occurred at those meetings, is that true?

MR. WELLS: Yes, sir.

TRIAL EXAMINER WEBB: Objection sustained. proceed.

MR. WELLS: We automatically have our exceptions, haven't we?

TRIAL EXAMINER WEBB: Certainly.

MR. WELLS: That is all I have.

MR. DENMAN: We would like to offer the part of the Typographical Union contract that was not offered by the Board.

MR. WELLS: We will object to it as immaterial.

TRIAL EXAMINER WEBB: You want to offer the entire contract?

MR. DENMAN: All that he didn't offer. I dont' want to waive my objections to the part that he offered.

TRIAL EXAMINER WEBB: Objection overruled. admitted.

(Thereupon the document above referred to was marked as "'Respondent's Exhibit No. 1" for identification, and was received in evidence.)

CROSS EXAMINATION

Q (By Mr. Denman) Mr. Huntress, what difference if you know, is there as to the type of work done
48 by the employees covered by the Typographical Union contract and the type of work done by the people in the editorial department as bearing on the question of whether you would be willing to have the Union control the membership of your employees in one instance or the other?

A There is a big difference between the mechanical—

MR. WELLS: Pardon me, just a minute, Mr. Huntress.

To which we object, Mr. Examiner, for the reason that it is immaterial and for this reason; as we understood the negotiations, respondent stated that it would not enter into a closed shop contract with the Guild because such a contract was in violation of the Act. Now, on the issue of good faith in its contention that a closed shop contract was in violation of the Act, we offered a portion of the Typographical Union's contract, and that was the only purpose for which we offered a portion of the Typo-

graphical Union's contract. It appears to us then not material.

TRIAL EXAMINER WEBB: You have opened the door. Objection overruled. You may answer.

MR. WELLS: May I make this further statement as a reason for objecting? The purpose of the question goes to the question of good faith. Now, it certainly might be material if respondent had raised at the time of bargaining the question or pointed out that a printer does something and a reporter does something else, and that there are different conditions
49 obtaining as to each, but the only issue which the respondent raised then was that this particular portion of the contract was violative of the law, and therefore, "We won't enter into it." They didn't give the reason that the conditions of employment of the two groups were different.

MR. DENMAN: Counsel is in error.

TRIAL EXAMINER WEBB: I will repeat that I was prepared to admit testimony to the effect that there was another Union in the plant covering another set of employees and that the respondent did have a contract with this other Union and that it was a closed shop contract, but to go into the details of that agreement and as to why it was entered into and for what purpose and all that, I don't think it is relevant to the issues of this case. I can see the point raised by the Board that perhaps if respondent entered into a closed shop agreement with one union why it could enter into a closed shop agreement with another union, but I don't think that will assist us very materially in deciding that point, because we are dealing with an entirely different union, we are dealing with an entirely different unit in the plant, men engaged in different kind of work, as I understand it.

We will proceed.

MR. DENMAN: If the Examiner, please, I don't want to go into great detail in reference to it, but I just wanted to ask the one question. If, as counsel says, he is going to the question of good faith, in the written objections shown in the stipulation there were two grounds on which the respondent objected to the closed shop. One was that the particular form in which they put it—not that any closed shop was violative but that the particular closed shop agreement submitted would be violative to the Wagner Act and furthermore that it would be an unreasonable restriction on the respondent in respect to that type of employee; that is, as to the employees of the editorial department.

When they go into the question of good faith, they say, "If you enter into a closed shop agreement in that department you must not refuse it in this department?" I want to show the difference between the two departments.

TRIAL EXAMINER WEBB: I take it that all appears in your stipulation.

MR. DENMAN: But it doesn't appear; that is the difference between the two departments doesn't appear.

TRIAL EXAMINER WEBB: I admitted a portion of this contract with the Typographical Union, is that right?

MR. DENMAN: Yes.

TRIAL EXAMINER WEBB: And I have also admitted the entire contract, but I think in both instances it is immaterial, because you have testimony in the record that there was another union in there, that there was another appropriate unit and that there was a contract, and that the contract called for a closed shop. Now, other than that I see no relevancy at all to

the matter, although I have admitted a portion of the agreement and now have admitted the entire agreement. That is as far as we will go in that.

Please proceed.

MR. DENMAN: That is all we have.

TRIAL EXAMINER WEBB: Just one question I would like to ask you.

I understand, Mr. Huntress, that respondent owns and operates two daily newspapers?

A The Express Publishing Company.

TRIAL EXAMINER WEBB: That you are in the general newspaper business? I mean the publication, distribution and sale of your newspapers doesn't vary in any material aspect from the publication and sale of any other daily newspaper in the country, is that true?

A Well, the Express Publishing Company, as you know, publishes two newspapers.

TRIAL EXAMINER WEBB: Yes, sir.

A And it is distributed mostly—in fact, very limited outside of Texas. We confine the circulation to the State of Texas; principally to San Antonio.

TRIAL EXAMINER WEBB: I understand that, but I say, you are engaged in the publication of two daily newspapers? That is the respondent's business?

52 A Yes, sir.

TRIAL EXAMINER WEBB: And what goes with it; advertising and matter of that kind?

A Yes, sir.

TRIAL EXAMINER WEBB: That is all.

(Witness excused.)

MR. RAGSDALE: Could the Guild have its notice in the record that it joins the attorney for the Board in the exceptions to the ruling out of the questions that were asked Mr. Huntress?

TRIAL EXAMINER WEBB: Certainly.

MR. WELLS: May I have two or three minutes' recess, and I think I will be through.

TRIAL EXAMINER WEBB: Yes, we will have a five minute recess, or ten, whichever is necessary.

MR. WELLS: Five will be plenty.

TRIAL EXAMINER WEBB: All right. A five minute recess.

(Thereupon a short recess was taken.)

THORNTON HALL

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Wells) You are Thornton Hall?

A That is correct.

Q What is your official connection with the Express Publishing Company?

53 A I am secretary of the company.

Q Are you acquainted with approximately what assessment the respondent pays to the Associated Press for its membership in that organization?

A Approximately $700.00 a week for both papers.

Q What does respondent pay to the United Press for the services accorded by the United Press to the respondent?

A Approximately $200.00 a week.

Q As secretary of the company, are you generally familiar with the working conditions of employees in the editorial department?

A In a general way, yes.

Q Will you just state to the Examiner what rule, if any, the respondent has practiced in regard to seniority among the employees of the editorial departments; that is, what weight respondent gives to the seniority which a particular employee has when considering lay-offs or promotions?

A Well, there has been very few changes made since I have been there in the editorial department.

Q Do you know of any instances when changes have been made when seniority has been given any weight?

A In promotions, you mean?

A Well, in any changes of any kind.

A I do in so far as retirement is concerned. We keep them on the pay roll even if they reach this age.

54 Q Any other happening in which seniority is given any weight? What I am trying to get at, Mr. Hall, is just your statement for the record of what seniority rule, if any, respondent has practiced in its editorial department?

A Well, no. I would say importance is given to the conduct of the employee and his efficiency rather than seniority.

Q What machinery has been in use as between the employees of the editorial department and the management in regard to the presentation of grievances which the employees might have?

A Through their department heads.

Q That is through the managing editors of each of the papers?

A That is right.

Q And that is through direct contact of the aggrieved employee with the managing editor of the particular paper?

A And then, of course, he has a right to go over the head of the managing editor if he wants to carry it that far.

Q First he sees the managing editor and if satisfaction is not received there, he may come to you or to Mr. Huntress?

A That is correct.

Q And that is what happens in actual practice?

A That is correct.

Q That is the only way you have handled grievances down there prior to this?

A That is the only way we would handle them down there. I don't recall now any grievances such as
55 you speak of. That would be the general practice.

Q Any grievances with respect to wages, hours, or working conditions would be handled that way?

A Yes, sir.

Q Do you have any way of handling severance wages; that is, when an employee severs his relations with the company?

A When we sever their connection?

Q Yes.

A Yes, sir, we do.

Q What is that?

A It varies depending on the conditions of the discharge.

Q Do you have any set rule as to that which you can state to the Examiner?

A We have a general rule of around two weeks' pay. That is not a set rule.

Q Is that given when an employee is discharged for what management considers cause?

A That is right.

Q What provision do you have for sick leave?

TRIAL EXAMINER WEBB: Now, just a moment. There is no 8 (3) charge in this complaint and respondent is not charged here with violating the Act in respect to any lay-offs, or discharges, or discrimination, is it?

MR. WELLS: No, sir. We merely wanted to show the Examiner and the Board what the working con-
56 ditions there were. We thought it might be material on the issue of good faith.

TRIAL EXAMINER WEBB: I don't see the relevancy of going into the matter of sick leave, bonuses, retirement fund, and so forth, because there is certainly nothing in the complaint here alleging any discrimination on the part of the respondent with respect to matters of that kind, is there?

MR. WELLS: Certainly not.

TRIAL EXAMINER WEBB: I don't think it is relevant to go into that because it is a vast field and we can take up a lot of time and it would be a burden on the record. It is very interesting to know what the respondent does with respect to sick leave, retirement, and vacation leave, but it is not relevant.

MR. WELLS: May I say briefly that it is to show what respondent's policy was; various working conditions in respect to wages, hours, sick leave, vacations, the presentation of grievances, and the matter of the practice of any seniority rules. Is it the Examiner's ruling that those matters are immaterial?

TRIAL EXAMINER WEBB: I can't see the relevancy at all in connection with the issues raised in this complaint, unless you can show me what it is. The respondent is certainly not charged with any discrimination with reference to matters of that kind, is he?

57 MR. WELLS: It appears to us, Mr. Examiner, that good faith can be judged only as against the background of the existing conditions in the editorial department of the respondent's papers.

TRIAL EXAMINER WEBB: I still maintain that the issue involved here with reference to this 8 (5) charge is whether or not the respondent failed to bargain in good faith. That is what he is charged with in violation of the Act; in that, he failed to do it.

MR. WELLS: We will not press the point. Note our exception to the ruling.

That is all we have of Mr. Hall.

CROSS EXAMINATION

Q (By Mr. Denman) Mr. Hall, referring to the written statement which the stipulation shows you read to the members of the editorial department, what was the occasion of your reading this statement?

MR. WELLS: Just a minute, please, Mr. Hall.

To which we object, first, because it is not proper cross examination, and while this particular question was not leading, we believe that respondent could make the witness its own witness for such purposes.

MR. DENMAN: We have no objection to the witness being considered as our witness.

TRIAL EXAMINER WEBB: Read the question, please.

(Question read.)

58 MR. WELLS: The further objection, Mr. Examiner, that the intent of the witness or the

mental processes through which he went which caused him to read the statement to his employees is not material. The facts are already agreed to and before the Examiner that the statement as it appears before the Examiner was made and it appears to us that reasons for the statement are immaterial.

TRIAL EXAMINER WEBB: Well, I understood, gentlemen, that you had drawn up a stipulation and submitted various and sundry documents and also stenographic notes of certain meetings and conferences that were alleged to have been held between the union and the respondent in respect to this 8 (5) charge and that you were going to stand on this stipulation. I didn't understand that you were going to put witnesses on the stand now to go in and delve into the details of these meetings.

MR. DENMAN: Your Honor, it was not the intent to do that, but counsel and I agreed to do this: We first attempted to stipulate in reference to Mr. Hall's intention—and the intention is specifically alleged in the petition—and we concluded that it was better to leave that to oral testimony, but counsel reserved the right to make objection to the questions we might ask; not on the ground that it is in the stipulation, but on the ground that it should not be asked at all.

Now, I haven't asked for mental processes. I just asked what was the occasion of it. However, I do intend
59 to follow that with one on the matter of intention.

The complaint said that Mr. Hall read this statement intending to have certain influence, and we feel that the complaint directly puts in issue what his intention was, but I haven't yet come to that queston. I am not asking him what the occasion was of his reading this statement?

TRIAL EXAMINER WEBB: Well, does the testimony in respect to these statements and the reasons for the statements, does all that appear in the documents?

MR. DENMAN: The fact that it was read is in the stipulation.

TRIAL EXAMINER WEBB: I haven't had an opportunity to go through them. It will take me several hours to go through these documents attached to the stipulation.

MR. DENMAN: The fact that it was read is stated in the stipulation, but I am sure counsel will bear me out that we reserved the right to put Mr. Hall on the stand for testimony as to his intention and counsel reserved the right to object to the admissibility of any such testimony, but it is understood that the stipulation did not cover that matter.

TRIAL EXAMINER WEBB: But usually I think it is proper to put a witness on the stand and let him testify to what he knows, to testify to facts, and we can draw our own conclusions as to what he probably meant by it, as to what those facts imply, and not get the conclusion of the witness. I would rather have facts in the record and draw my own conclusions rather than have the conclusion of the witness. However, I don't object to the question. If that is the basis on which you are now questioning him, objection overruled.

MR. DENMAN: The question was what was the occasion of reading this statement?

MR. WELLS: The further objection that the question is ambiguous. I don't know what he means by "occasion". Does he mean what occasioned the witness to do it or what happened when he read it?

TRIAL EXAMINER WEBB: What paragraph of the complaint are you referring to now?

MR. DENMAN: To the end of paragraph 8.

Q (By Mr. Denman) Were there any happenings prior to your reading the statement that led you to read the statement?

MR. WELLS: We object to that as immaterial.

TRIAL EXAMINER WEBB: Well, the complaint does say at the latter part of paragraph 8 of the complaint, "And made further statements well known to respondent intending to have the effect of discharging membership in said San Antonio Newspaper Guild." Now, as I understand it, the stipulation and these documents attached to it covers this incident and the details in connection with the reading of this statement.

MR. DENMAN: It covers simply the fact that it was read. Counsel and I understood, and I am sure
61 counsel will bear me out, that we first undertook to stipulate to those facts leading up to it and he said that if I wanted to offer any evidence I could do so, subject to his right to object to the admissibility of it.

MR. WELLS: That is correct. If I might interrupt, I would like to move to amend paragraph 8 of the complaint, the particular portion which you have just read, deleting the words, "intending to have the effect of discouraging. . ." and substitute therefore "having the effect of discouraging membership in said San Antonio Newspaper Guild".

TRIAL EXAMINER WEBB: Any objejction to that motion?

MR. DENMAN: We have no objection to the amendment.

TRIAL EXAMINER WEBB: The motion is granted.

Now, do you wish to pursue this line of inquiry?

MR. DENMAN: I would then not want to ask him what his intention was, but I would still want to ask if any happenings occurred prior to his reading the statement that caused him to read it and then ask him what those happenings were. If counsel wants me to be definite, I can be more explicit. Of course, I didn't want to lead the witness. Do you want me to be more definite? If you do, I can be more definite.

TRIAL EXAMINER WEBB: I might say that the Trial Examiner is at a disadvantage in this respect, it appears to me, in that we are trying this case more or less on a stipulation and documentary evidence and stenographic notes of meetings that were held and they are so voluminous that it has been impossible for me to even casually glance through them. I have gone through the stipulation with reference to interstate commerce, but with reference to these other documents, it would take me hours to go through them, and now we are asking a witness here something in regard to what occurred at one of these conferences where certain documents were read and that has been objection made to that question by the Board, and, as I say, I am at a disadvantage as to how to rule on that, because I am not familiar with what took place at those meetings. You gentlemen are because you have perused these documents and these stenographic notes and it has been impossible for me to do so and that is one reason why I didn't think that you were going into any oral testimony in regard to matters covered by the stipulation.

62

MR. WELLS: Mr. Examiner, we are not going into matters in regard to the violation of Section 8 (5) at the present time. This is the 8 (1) allegation to the effect that Mr. Hall called a meeting of all the employees of the editorial departments and there made certain statements to them.

TRIAL EXAMINER WEBB: All of that is included in these documents attached to the stipulation, isn't that true?

MR. WELLS: That is correct.

TRIAL EXAMINER WEBB: Now, you have a witness on the stand and are going into that matter.

63 MR. WELLS: The fact that the meeting was called and that the particular statements were made is in the stipulation: The events leading up to it are not in the stipulation for the reason that I considered that immaterial and Mr. Denman and I had an agreement that he would attempt to put witnesses on to show those events and that I would be free to make my objection that the testimony was immaterial.

TRIAL EXAMINER WEBB: I don't object to the witness answering the question. Read the question, please.

(Question read.)

A There were.

Q (By Mr. Denman) What were those happenings?

MR. WELLS: Now, may it be understood, Mr. Examiner, that we object to the entire line of inquiry as immaterial?

TRIAL EXAMINER WEBB: Objection overruled. As I have already stated, it is dealing with something that is in evidence, but I am not cognizant of it because I haven't go through this evidence, but the objection is overruled. You may answer the question.

A Questions were asked of me by employees as to the probably effect on their employment with regard to their joining or not joining the Guild.

Q Did you answer those employees as to what the effect would be?

64 A I called the meeting of all the employees there and then I read the statement.

Q Was this statement then addressed in answer to those inquiries?

A Yes.

TRIAL EXAMINER WEBB: Aren't we going over old ground? Isn't all of that covered in the stipulation?

MR. DENMAN: No, sir, that is not covered by the stipulation.

TRIAL EXAMINER WEBB: Well, the stipulation then is not complete.

MR. DENMAN: No, the stipulation does not purport to cover all facts. We understood that Mr. Huntress was going to be put on the stand with reference to a certain matter.

TRIAL EXAMINER WEBB: Oh, I see. It was understood that you were going to put some witnesses on the stand to fill in certain testimony that you considered essential that was not covered by the stipulation.

MR. DENMAN: That is correct.

TRIAL EXAMINER WEBB: Well, proceed. If you had told me that at first we would have gotten along a lot faster.

Q (By Mr. Denman) Was there any other m tter that came up that led to the making of this statement?

MR. WELLS: Our objection goes to all this, Mr. Examiner?

TRIAL EXAMINER WEBB: Objection overruled. He may answer.

A The question by the different employees. There was more than one employee that raised the question.

65 Q (By Mr. Denman) In reference to the portion of the statement dealing with the things that the company had done for the employees, what led to the making of that statement?

A Well, I felt that the company was entitled to the credit that was due it for the benefits to employees; the things that they had done for the welfare of the employees; and I knew of other people who were claiming credit for those things and I thought that the Express Publishing Company should have the credit.

MR. DENMAN: That is all.

MR. WELLS: Without waiving our objection, Mr. Examiner, to that evidence, we would like to cross examine the witness on that point.

TRIAL EXAMINER WEBB: Certainly.

REDIRECT EXAMINATION

Q (By Mr. Wells) You say others were claiming credit for some of the good things—

TRIAL EXAMINER WEBB: He is your witness anyhow, Mr. Wells.

MR. WELLS: Not for this purpose.

TRIAL EXAMINER WEBB: No, this is redirect examination. You haven't closed your case yet, have you? You haven't closed your case for the Board yet?

MR. WELLS: We haven't rested, no.

TRIAL EXAMINER WEBB: The respondent has not put on any witnesses so far. Proceed.

66 Q (By Mr. Wells) I believe that you stated you understood that others were claiming credit for what the company had been doing for the employees. What do you mean by that, Mr. Hall?

A I mean that there was a general feeling on the part of the employees that they could look forward to different benefits that they were already receiving.

Q Well, did you mean that some of the employees had expressed to you the fact that they thought the Guild had done some good for them in regard to working conditions?

A No, I didnt mean that. I mean that some of the employees had made the remark that they could look forward to those benefits if an arrangement was made and they were organized, and we were already giving them those things.

Q You just didn't want the Guild to get credit for something it was not doing, is that it?

A No, not that. I wanted the Express Publishing Company to have full credit for what they were doing.

Q Well, I don't quite understand your statement as to others who were getting credit. Who were the others?

A When I said, "Others", I meant the other employees; some of the employees who had been making remarks that in the event of organization of the Guild they could look forward to those things and we were already giving them to them.

Q And you wanted to discount those statements made on behalf of the Guild?

67 A No, I didn't want to discount the statements made on behalf of the Guild. I wanted to establish the credit that was due us.

Q And point out that the credit was due you rather than anyone else?

A It was our money we were spending, yes.

Q What particular employees came to you with questions about what the effect of the Guild would be?

A Well, one Fred Malley.

Q Do you remember what he asked you?

A Yes, he came to me and says—this is substantially what he said. I don't remember the exact words—that he wanted to discuss the matter with me and it was a question of whether or not he should join the Guild. He said, "They are just putting pressure on me every day and I don't want to join."

TRIAL EXAMINER WEBB: Who did you say it was?

A Fred Malley.

TRIAL EXAMINER WEBB: What does he do?

A Sports editor of the Evening News.

TRIAL EXAMINER WEBB: When did that occur?

A That occurred sometime the early part of the year. I don't know exactly what day.

TRIAL EXAMINER WEBB: As near as you can fix it.

A Probably March.

TRIAL EXAMINER WEBB: 1938?

68 A Yes.

TRIAL EXAMINER WEBB: That was in the office during working hours?

A Yes, sir.

TRIAL EXAMINER WEBB: All right. Go ahead.

A And I told Fred that I couldn't advise him and wouldn't advise him in that respect; that it was a matter that he had to decide alone; that what we expected him to do down there was to take care of his job and as long as he did that his employment was satisfactory to us.

Q (By Mr. Wells) In relation to the time when you read your statement, can you give us as an approximation as to how long before you read the statement it was that Malley came to you?

A How long before I read the statement?

Q Yes.

A Well, I don't remember exactly when it was. It was sometime the early part of March, if my recollection serves me rightly and I read the statement later on.

Q Did anyone else come to you with inquiry about that same general matter?

A A department head approached me on it.

Q Who was he?

A A. W. Grant.

Q And what is his position?

69 A Managing editor of the Express.

Q Did any of the employees classified as editorial employees; that is, city editors, reporters, copy desk men, rewrite men, artists, photographers, copy boys or librarians, or sports writers, or society editors, or writers; come to you?

A None other than what I have mentioned.

Q And that happened sometime around the first of March?

A As I remember it; as my memory serves me, yes, sir.

Q You conferred with Mr. Huntress before making the statement?

A Before making the statement, I did.

Q Well, what was it that happened between early March and April 4, that caused you to make the statement?

A What happened between early March and April 4th?

Q Yes.

A I don't recall anything now except the statement I have just made.

Q Of course, you had attended the two bargaining conferences which were held on March 14, and March 30?

A I had attended them, yes, sir.

Q And five days following the second of these, you read the statement to the employees?

A I suppose that is correct. I don't now the date.

MR. WELLS: I believe that is all.

70 RECROSS-EXAMINATION

Q (By Mr. Denman) Mr. Hall, counsel asked you about someone else coming to you and you stated Mr. Grant. What was the nature of his communication to you?

A Mr. Grant reported to me that two employees in his department had approached him—

MR. WELLS: Pardon me, Mr. Hall.

To which we object as hearsay as to what they reported.

TRIAL EXAMINER WEBB: Objection overruled. Proceed.

A (Continuing)—that they had reported to him that pressure had been brought to bear on him to join the Guild and they wanted to know what to do and Mr. Grant reported that to me. I didn't talk with them.

Q Did Mr. Malley join the Guild.

A I understand he is a member of the Guild.

Q Now, I will ask you this question: Don't answer until counsel has an opportunity to object: As to whether you intended your statement to have the effect of discouraging membership in the Guild, what are the facts?

MR. WELLS: To which we object as immaterial.

TRIAL EXAMINER WEBB: Read the question.

(Question read)

A Well, if the witness were to answer it would be a matter of opinion. I don't see how it would serve to enlighten us in determining these issues, do you, sir?

71 MR. DENMAN: Yes, Your Honor. In trying criminal cases, which I sometimes indulge in, we frequently ask the defendant about his intent. Counsel says, "If this statement did have the effect of . . ." it is regardless of what the intent is. I think the intent is always important in the question of any violation of the law; that is, whether he did it intentionally. For instance, in any criminal case, you can ask the defendant, "You shot the man. Did you intend to do it?" And he can say, "No, I didn't intend to."

TRIAL EXAMINER WEBB: Isn't it presumed that a man intends to what what he does?

MR. DENMAN: Yes, there is a prima facie presumption that he does, but it is not conclusive and we think the question of wilfulness is always one that can be put in the case.

TRIAL EXAMINER WEBB: I think in this case it is more appropriate to let us get the facts in the record; just what was said and who said it, and what was done, when and where, all the facts, and then we will draw our own conclusions as to what we think was in the man's mind when he said it or whether or not he did it. I don't object to his answering the question, but as I say, it is just a matter of opinion. Objection overruled. You may answer.

A Will you read the question again?

TRIAL EXAMINER WEBB: Read the last question.

(Question read.)

72 A No, I had no intention of my statement discouraging membership in the Guild. I was very careful in making the statement not to leave that impression.

MR. DENMAN: That is all.

TRIAL EXAMINER WEBB: You don't know what impression it did make, though, do you?

A I may answer that by saying that—

TRIAL EXAMINER WEBB: You didn't intend for it to make a wrong impression?

A No.

TRIAL EXAMINER WEBB: But you don't know whether it did or not?

A Of course, I don't know how they took it.

TRIAL EXAMINER WEBB: Well, that doesn't matter. Proceed.

MR. WELLS: That is all.

TRIAL EXAMINER WEBB: That is all. Thank you, Mr. Hall.

(Witness excused.)

MR. WELLS: The Board now rests, Mr. Examiner.

MR. DENMAN: Respondent also rests. Of course, we want to still press our motion and don't want to waive that, but we have no further evidence.

TRIAL EXAMINER WEBB: Certainly not. Those motions are still before the Trial Examiner, but they haven't been ruled on, and as I stated, ruling was reserved.

MR. WELLS: At this time, Mr. Examiner, we
73 would like to move to conform the complaint to the proof as offered. I haven't had an opportunity to check carefully the complaint as to correctness of dates, and so forth. I will do that and submit to Mr. Denman any changes that I make.

TRIAL EXAMINER WEBB: That is the usual motion. Is there any objection?

MR. DENMAN: Well, I couldn't tell until I knew what changes were going to be made. If they made a new allegation—

TRIAL EXAMINER WEBB: As I understand it, Mr. Denman, that is the usual motion made by the Board's attorney when he concludes his part of the case and it relates, not to any material amendment to the complaint or changes in the complaint, but only to cover any changes with respect to names or dates. Is that true, Mr. Wells?

MR. WELLS: That is correct.

TRIAL EXAMINER WEBB: Well, the motion is granted.

Now, I would like to hear from the Union. The Union seems to be represented here by Mr. Ragsdale. Have you any testimony or evidence that you wish to submit at the hearing, sir, on behalf of the Union?

MR. RAGSDALE: No, I don't believe we have any further testimony that we care to submit except an objection to one statement that was made in the arguments to the effect that the Guild and the negotiators for the Guild

had admitted that the contract which it asked for
74 was excessive. We believe that the record of the negotiation conferences will bear us out in our contention that we didn't admit that the requests were excessive.

TRIAL EXAMINER WEBB: I don't think that statement was made by any witness, was it?

MR. RAGSDALE: It was made by the attorney for the respondent.

TRIAL EXAMINER WEBB: As I have already stated, statements made by attorneys are not evidence in the case. We do not determine the case on statements made by attorneys in the case, unless, of course, they are made in the form of a stipulation and agreed to by all parties at interest.

MR. RAGSDALE: Well, the Guild has nothing further to offer.

TRIAL EXAMINER WEBB: If there is no more evidence or testimony that any party at interest wishes to present at this hearing, I wish to inform the parties at interest that anyone desiring to make an oral argument before the Trial Examiner may do so immediately after the hearing is concluded. If it is desired by any party at interest to make an oral argument before the National Labor Relations Board in Washington, D, C., it will be necessary to file a written request with the Board in Washington within ten days of the receipt of the intermediate report of the Trial Examiner. Of course, briefs may be filed by any party at interest, if they so desire.

75 Now, I would like to hear from you gentlemen with respect to whether you wish to make an oral argument after the conclusion of this hearing, which, of course, would not go on the record, or do you wish to reserve the privilege of filing a brief?

MR. DENMAN: The respondent would like to make an argument, either orally or by brief, and I think the brief would be the better, because the Examiner has not had an opportunity to read the stipulation yet, and so the argument would be meaningless, and if we could file a brief we would prefer to do that.

TRIAL EXAMINER WEBB: Certainly. Any party may file a brief. The only question now before us is that we have to set a date.

MR. DENMAN: As I understand it, Mr. Conklin can get us a copy of the testimony in about seven days and I am sure it wouldn't take me over three days after that to mail my brief; that is; to get it up and mail it; as far as I am concerned.

TRIAL EXAMINER WEBB: Well, there has not been much testimony taken and we are about to conclude the hearing and I would like to ask Mr. Conklin about when he expects to have this transcript completed.

(Discussion off the record.)

MR. DENMAN: We will promise to mail our brief within three days after we get the transcript. If we get it earlier than in seven days, we will mail it within
76 three days after the receipt of the transcript.

TRIAL EXAMINER WEBB: Well, now the transcript will be completed not later than the 13th of October. Now, how many more days do you want?

MR. DENMAN: Just give me three days in which to mail it from here.

TRIAL EXAMINER WEBB: That will be five days to get it in Washington.

MR. DENMAN: Of course, it won't get there within three days, but I will have it in the post office within three days after the receipt of the transcript.

TRIAL EXAMINER WEBB: All right. We will give you seven days, then. Have it understood that the brief with the required number of copies will be at the Regional Office not later than October 20. Is that satisfactory?

MR. DENMAN: Yes, sir, that is satisfactory.

TRIAL EXAMINER WEBB: Now, you understand that you dont' have to file a brief unless you want to.

MR. DENMAN: Yes, sir. We will make only a very brief argument.

TRIAL EXAMINER WEBB: And if you do file one, it must reach the Regional Office not later than October 20. If it does not, we will take it that you don't intend to file one.

MR. DENMAN: That is correct.

77 TRIAL EXAMINER WEBB: Well, gentlemen, if there is nothing more to bring before the hearing, I will declare that the hearing is now closed.

(Whereupon, at 4:30 o'clock p. m., the hearing closed.)